

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
8

9 JUAN X. HIGH,)

10 Petitioner,)

11 vs.)

12 GREGORY COX, *et al.*,)

13 Respondents.)
14

2:11-cv-01736-PMP-GWF

ORDER

15 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,
16 by a Nevada state prisoner.

17 The petition in the instant action challenges petitioner's state conviction in case number
18 C-62508. Petitioner previously challenged this same conviction in this Court, filed under case
19 number 3:00-cv-00346-LRH-VPC. By order filed September 11, 2003, the Court denied the petition
20 on the merits in case number 3:00-cv-00346-LRH-VPC. (ECF No. 56). Judgment was entered on
21 September 12, 2003. (ECF No. 57).

22 "Before a second or successive application permitted by this section is filed in the district
23 court, the applicant shall move in the appropriate court of appeals for an order authorizing the
24 district court to consider the application." 28 U.S.C. § 2244(3)(A). The instant petition is a
25 successive petition, which requires petitioner to seek and obtain leave of the Ninth Circuit Court of
26 Appeal to pursue. *See* 28 U.S.C. § 2244(b)(3) *et seq.* The petitioner has not presented this Court
27 with proof

1 that he has obtained leave to file a successive petition from the Court of Appeals. Therefore, the
2 petition will be dismissed.

3 In order to proceed with any appeal, petitioner must receive a certificate of appealability. 28
4 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951
5 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a
6 petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a
7 certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84
8 (2000). “The petitioner must demonstrate that reasonable jurists would find the district court's
9 assessment of the constitutional claims debatable or wrong.” *Id.* (*quoting Slack*, 529 U.S. at 484).
10 In order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues
11 are debatable among jurists of reason; that a court could resolve the issues differently; or that the
12 questions are adequate to deserve encouragement to proceed further. *Id.*

13 Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing Section
14 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in the
15 order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a
16 notice of appeal and request for certificate of appealability to be filed. Rule 11(a). This Court has
17 considered the issues raised by petitioner, with respect to whether they satisfy the standard for
18 issuance of a certificate of appealability, and determines that none meet that standard. The Court
19 will therefore deny petitioner a certificate of appealability.

20 **IT IS THEREFORE ORDERED** that this action is **DISMISSED** with prejudice as a
21 successive petition.

22 **IT IS FURTHER ORDERED** that all pending motions in this action are **DENIED**.

23 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly.

24 ///

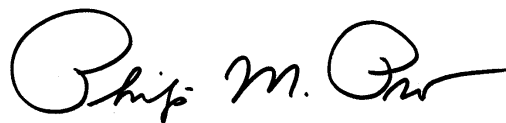
25 ///

26 ///

27

1 **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**
2 **APPEALABILITY.**

3
4 DATED: November 17, 2011.

5 

6
7

PHILIP M. PRO
United States District Judge